Federal Communications Commission
Washington, DC 20544

In The Matter of	)	
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Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service	)	CC Docket No. 96-45
	)	
	)	

Before the Joint Board

COMMENTS OF VALOR TELECOMMUNICATIONS ENTERPRISES, LLC

Valor Telecommunications Enterprises, LLC submits these comments in response to the Joint Board's request for comments on whether to recommend that the FCC expand the types of telecommunications service that are eligible for universal service fund ("USF") support.[1] Below, Valor requests that the Joint Board urge the FCC to provide eligible carriers with USF support for investments necessary to make high-speed Internet access service available to end users with loops provisioned from small central offices. Valor also outlines three core ingredients of the USF plan it recommends.

BACKGROUND

Valor is one of the nation's largest incumbent local exchange carriers ("ILECs") serving rural areas. The company provides local telephone service to more than 550,000 loops in about 250 widely dispersed communities in Oklahoma, New Mexico, Texas, and Arkansas. All but 10 of these communities have a population of less than 10,000, and more than 90 percent have fewer than 5,000 people. Moreover, more than 90 percent of the Valor's 261 central offices serve fewer than 5,000 loops, and the average Valor central office serves just 2,100 loops. Maps showing the Valor exchange area in each of the states it serves are attached as ATT. 1.

[1] Public Notice rel. Aug. 21, 2001.

Valor uses DSL technology to provide high-speed Internet access service in parts of the two largest towns in its service area (Texakana, TX and Broken Arrow, OK). But it has not deployed high-speed Internet access service in its roughly 250 other communities because it is uneconomic to do so given that demand for the service at the price Valor must charge is not large enough to permit the company to recover its fixed costs within a reasonable period of time. In an effort to help meet this demand, Valor has entered into a marketing agreement with StarBand, a satellite based provider of high-speed Internet access service.

There is broad agreement that thousands of small communities may not get high-speed Internet access from LECs for a very long time without regulatory intervention. For example, the FCC has concluded that "in all likelihood, market forces alone will not guarantee that many rural Americans will have access to" high-speed Internet access service.[2] And the agency has noted that analysts predict widely that without regulatory intervention, DSL service may never reach roughly 20 percent of all US households.[3] Even Verizon, among the most aggressive opponents of USF funding given that only a small percentage of its customers are located in small communities, has admitted that it may never be economic to deploy either DSL or cable modem service in much of rural America.[4] The Wireless Communications Association likewise has informed the FCC that it is unlikely that terrestrial wireless technologies capable of

[2] *Second Section 706 Report*, 15 FCC Rcd. 20913 at ¶220 (2000).

[3] *Id.* at ¶196.

[4] *See* Verizon Comments in *Third Section 706 Inquiry* at 6 (CC Dkt. No. 98-146, Sept. 24, 2001). See also USTA Comments in *Third Section 706 Inquiry* at 5 (CC Dkt. No. 98-146, Sept. 24, 2001 ("there are a few multi-exchange rural telephone companies and other smaller local exchange carriers that suffer from unique situations that make the provision of advanced services... difficult or virtually impossible"); SBC Comments in *Third Section 706 Inquiry* at 4 (CC Dkt. No. 98-146, Sept. 24, 2001 (noting that SBC's ultimate "goal" is to make its DSL offering available to just 80 percent, rather than 100 percent, of its ILEC customers).

providing high-speed Internet access service will be deployed on a significant scale in rural communities without major changes in FCC regulatory policy.[5]

Because a disproportionately large percentage of rural America may not obtain high-speed Internet access service within a reasonable period of time without FCC assistance due to the economics of providing the service, the agency has tentatively concluded that it may want to provide that assistance in order to "stimulate deployment" in rural communities where deployment otherwise is unlikely to occur within the foreseeable future.[6] The Commission has stated that it also may want to provide assistance in order to "speed deployment" even in the somewhat larger communities where deployment is foreseeable but may not occur without FCC help for several more years.[7] The agency has concluded that FCC assistance may be warranted in both of these two situations given that high-speed Internet access is "critical not only for rural development - - attracting and obtaining residents and businesses - - but for basic sustainability in an ever-changing economic environment."[8]

DISCUSSION

Valor urges the Joint Board to recommend that the FCC make universal service support available for the provision of high-speed Internet access service in areas where deployment may not otherwise occur within a reasonable period of time. Internet access service is "high-speed" if it provides a nominal transmission speed in at least one direction of at least 200 kbps.[9]

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[5] Wireless Communications Association Comments in *Third Section 706 Inquiry* at 1 (CC Dkt. No. 98-146, Sept. 24, 2001).

[6] *Second Section 706 Report, supra,* 15 FCC Rcd. 20913 at ¶205.

[7] *Id.*

[8] *Id.* at ¶216 (quoting with approval the conclusion of a recent Federal Reserve Bank study).

[9] *Id.* at ¶ 11.

Section 254(c)(1) of the Act authorizes the FCC to take the action that Valor proposes since that section gives the agency broad discretion to define what telecommunications services are eligible for universal service support. While Section 254(c)(1) requires the FCC to "consider" both the public interest as well as three other factors in defining USF-eligible services, the Commission has held that it has authority to declare a given service eligible for USF support if the public interest warrants doing so even if one or more of the three other factors does not, by itself, justify that declaration.[10]

The public interest plainly warrants providing USF support for high-speed Internet service. USF support is in the public interest first because high-speed Internet connections are "critical not only for . . . attracting and obtaining residents and businesses . . . but for basic sustainability in an ever-changing economic environment" as the FCC already has found.[11] USF support also is in the public interest since Section 706 of the Act requires the Commission to "encourage the deployment" of that service.[12]

Although the Commission may make high-speed Internet access USF-eligible without considering whether the service is of the type described by the remaining three factors set forth in Section 254 (c)(1) given that doing so is in the public interest, two of those three remaining factors nonetheless clearly describe high-speed Internet service. First, it is a service that "is being deployed in public telecommunications networks by telecommunications carriers" at a rapid place as the FCC already has found.[13] High-speed Internet access service also is a service that is now "essential to education, public health, or public safety." While the FCC

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[10] *Fed.-State Joint Board on Univ. Service, Report and Order*, 12 FCC Rcd. 8776 at ¶61 (1997).

[11] *See* n. 8, *supra*.

[12] 47 U.S.C. § 157 (notes).

[13] *Second Section 706 Report, supra,* 15 FCC Rcd. 20913 at ¶ 63 (concluding that "there has been appreciable growth in the deployment of high-speed services" in the past one year alone).

concluded that record evidence before it in May 1997 did not justify a finding that high-speed Internet access was then essential to those purposes,[14] circumstances have changed dramatically in the last four years. For example, far more Internet sites contain graphics-intensive and video-intensive materials today than in early 1997. The absence of high-speed Internet connections acts to discourage Internet users from obtaining full use of these sites notwithstanding the valuable education, health care, and public safety information that many of them contain. Perhaps the best evidence that high speed Internet access is now "essential to education" is that far more than half of all U.S. public schools access the Internet today with a high-speed connection.[15]

The final factor that the FCC must consider under Section 254(c)(1) - - whether the service is one that is subscribed to by a "substantial majority of residential customers" - - does not yet apply to high-speed Internet access. But this should not prevent the Commission from adopting a USF mechanism to support high-speed Internet access given that declaring the service USF-eligible is so plainly in the public interest as discussed above.

In order to help speed the deployment of high-speed Internet service throughout small town America, Valor urges the Joint Board to recommend to the FCC that it establish a high-speed Internet access USF program that contains three important elements, as follows:

- First, USF support should be provided to any eligible telecommunications carrier that invests in any equipment that is necessary in order to provide high-speed Internet

[14] *Fed. State Joint Board Univ. Service, Report and Order, supra*, 12 FCC Rcd. 8776 at ¶ 83.

[15] Indeed, 52 percent of public schools had subscribed to high-speed Internet access service as of April 1999 (i.e., more than two-and-one-half years ago). *See Second Section 706 Report, supra,* 15 FCC Rcd. 20913 at ¶ 225 (citing study by Quality Education Data, Inc.). Since that time, subscribership to high-speed Internet connections at public schools almost certainly has grown considerably given the dramatic increase in subscribership to high-speed access during this period generally and given that USAC has provided schools several billion dollars in the last two-and-one-half years pursuant to Section 254(h) of the Act to help pay for new telecommunications services, including high speed Internet access service. *See also* Nat. Center for Educ. Statistics, "Internet Access in U.S. Pub. Schools and Classrooms: 1994-2000" at 6 Table 4 (May 2001) (reporting that 77 percent of all public schools had dedicated Internet connections in 2000). The vast majority of dedicated connections almost certainly provide high speed, as opposed to low speed, access.

access service to end users served from central offices with fewer than 20,000 local loops. USF support is justified when investments are made so that high-speed Internet access service can be provided over loops provisioned from these small central offices since otherwise it most likely is not economically feasible to provide service over these loops as *explained* above.

- Second, the FCC should make clear that investments necessary to make high-speed Internet access available from the small central offices described above include each of the following: (i) DSLAMs, packet switching equipment, and line-splitting equipment deployed in a small central office, (ii) infrastructure necessary to transmit the service over loops terminating in a small central office that are provisioned through a DLC system, and (iii) transport facilities between a small central office and an ISP POP located beyond the local calling area of end-users whose loops are provisioned from that central office.[16] The cost to acquire and deploy this infrastructure should qualify for USF support since these costs must be incurred in order to make high-speed Internet access service available to loops provisioned from a given central office.

- Third, the percentage of the cost of qualifying infrastructure that is paid by the USF should increase as the size of the central office with which those investments are associated gets smaller. For example, a carrier deploying qualifying infrastructure necessary to provide high-speed Internet access service over loops provisioned from a central office with 2,000 loops should receive USF support for a larger percentage of the cost of that investment than it would receive if it had made the same investment in order to provide service over loops provisioned from a central office with 15,000 loops. Proceeding in this fashion makes sense since the cost to provide high-speed Internet access service to a given end user location is

[16] A newly completed study by NECA concludes that 55 percent of ILEC central offices are more than 70 miles from the nearest ISP node. See NECA, "Middle Mile Cost Study" (executive summary), stored on www.neca.org/midmile.htm.

directly related to the number of loops provisioned from the central office through which that end user location is served.

CONCLUSION

The Joint Board should ask the Commission to establish a universal service support program that supports investments necessary to make high-speed Internet access service available to end users whose loops are provisioned from small central offices. The program should be structured in the manner described above.

Respectfully submitted,

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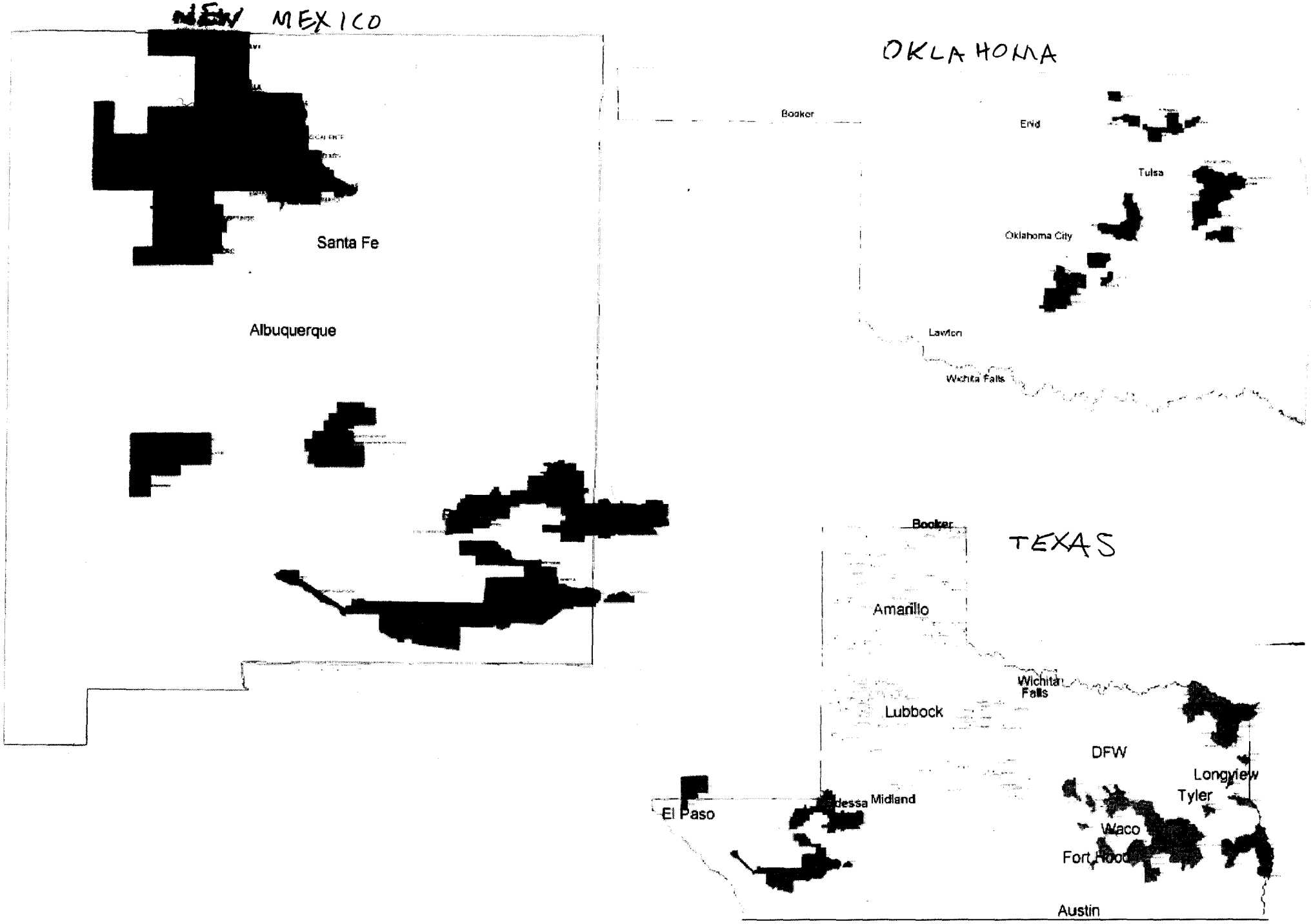
ATT. 1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